

**WEST VIRGINIA LEGISLATURE**

**2022 SECOND EXTRAORDINARY SESSION**

**Introduced**

**House Bill 211**

BY DELEGATES (MR. SPEAKER) AND SKAFF

(BY REQUEST OF THE EXECUTIVE)

[Introduced April 25, 2022]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article  
2 designated §17C-25-1, §17C-25-2, §17C-25-3, §17C-25-4, §17C-25-5, §17C-25-6, §17C-  
3 25-7, §17C-25-8, §17C-25-9, §17C-25-10, and §17C-25-11, all relating to flying under the  
4 influence and other aviation offenses; prohibiting operation of aircraft while under the  
5 influence of alcohol, controlled substances, or drugs; defining terms; providing that a  
6 person operating an aircraft while under the influence is guilty of a misdemeanor and  
7 establishing criminal penalties therefor; providing that injury of another person while  
8 operating an aircraft while under the influence is a felony and establishing criminal  
9 penalties therefor; providing a person who knowingly allows another person to operate his  
10 or her aircraft while under the influence is guilty of a misdemeanor and establishing  
11 criminal penalties therefor; providing increased criminal penalties for subsequent  
12 offenses; providing for inclusion of previous offenses when determining number of  
13 offenses; providing that it is not a defense that the person was legally allowed to use  
14 alcohol, controlled substances, or drugs; requiring clerk of court to notify federal aviation  
15 administration of a conviction; providing for implied consent to testing; providing for  
16 preliminary analysis of breath to determine its alcohol concentration; providing for  
17 secondary testing and interpretation of such tests; providing person may demand  
18 additional testing; providing standards for blood withdrawal; allowing test results to be  
19 used in civil and criminal proceedings; allowing person to demand testing within two hours  
20 of arrest; providing for fee for withdrawing a blood sample or administering a urine test;  
21 providing that the unauthorized taking of an aircraft is a felony and establishing criminal  
22 penalties therefor; requiring federal licensure to operate an aircraft and that evidence of  
23 licensure be in the person's personal possession and in the aircraft; providing criminal  
24 penalties; and requiring state law enforcement officers to collaborate in enforcing  
25 aeronautics laws.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 25. AVIATION RELATED OFFENSES.****§17C-25-1. Definitions.**

1       As used in this article, unless the context otherwise requires:

2       "Aeronautics" means the art and science of flight including, but not limited to,  
3 transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft  
4 power plants, and accessories, including the repair, packing, and maintenance of parachutes; the  
5 design, establishment, construction, extension, operation, improvement, repair, or maintenance  
6 of airports or other air navigation facilities; and education about aeronautics.

7       "Aircraft" means any contrivance now known, or hereafter invented, used or designed for  
8 navigation of or flight in the air.

9       "Air navigation" or "navigation" means the operation or navigation of aircraft in the air  
10 space over this state, or upon any airport within this state.

11       "Air navigation facility" means any facility other than one owned or controlled by the federal  
12 government used in, available for use in, or designed for use in aid of air navigation, including  
13 airports, and any structures, mechanisms, lights, beacons, markers, communications system, or  
14 other instrumentalities or devices used or useful as an aid or constituting an advantage or  
15 convenience to the safe takeoff, navigation, and landing of aircraft or the safe and efficient  
16 operation or maintenance of an airport, and any combination of any or all of such facilities.

17       "Airport" means any area of land or water which is used, or intended for use, for the landing  
18 and takeoff of aircraft and any appurtenant areas which are used, or intended for use, for airport  
19 buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities  
20 located thereon.

21       "Controlled substance" has the meaning ascribed to it in Chapter 60A of this code.

22       "Law-enforcement officer" means: (1) Any member of the State Police; (2) any sheriff and  
23 any deputy sheriff of any county of this state; (3) any member of a police department in any

24 political subdivision of this state; and (4) any natural resources police officer of the Division of  
25 Natural Resources.

26 “Operation of aircraft” or “operate aircraft” means the use, navigation, or piloting of aircraft  
27 in the airspace over this state or upon the ground within this state.

28 “Person” means any individual, firm, partnership, corporation, company, association, joint  
29 stock association, or body politic, and includes any trustee, receiver, assignee, or other similar  
30 representative thereof.

31 “Political subdivision” means any county, city, town, village, or other political subdivision  
32 of this state.

**§17C-25-2. Operation of aircraft while under influence of alcohol, controlled substances,**  
**or drugs; criminal penalties.**

1 (a) Any person who operates an aircraft in this state while:

2 (1) Under the influence of alcohol;

3 (2) Under the influence of any controlled substance;

4 (3) Under the influence of any other drug;

5 (4) Under the combined influence of alcohol any controlled substance, or any other drug;

6 or

7 (5) Has an alcohol concentration in his or her blood of four-hundredths of one percent or  
8 more by weight is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a  
9 regional jail facility not more than one year or fined not more than \$500, or both, in the discretion  
10 of the court.

11 (b) Any person who operates an aircraft in this state while:

12 (1) Under the influence of alcohol;

13 (2) Under the influence of any controlled substance;

14 (3) Under the influence of any other drug;

15           (4) Under the combined influence of alcohol any controlled substance, or any other drug;  
16   or

17           (5) Has an alcohol concentration in his or her blood of four-hundredths of one percent or  
18   more by weight who, when operating an aircraft while under the influence, does any act forbidden  
19   by law or fails to perform any duty imposed by law in the operation of the aircraft, which act or  
20   failure proximately causes bodily injury to any other person, is guilty of a felony and, upon  
21   conviction thereof, shall be imprisoned in a state correctional facility for a definite term of  
22   imprisonment of not less than one year nor more than five years, or in the discretion of the court,  
23   be confined in a regional jail facility not more than one year and be fined not more than \$500.

24           (c) Any person who knowingly permits his or her aircraft to be operated in this state by any  
25   other person who is:

26           (1) Under the influence of alcohol;

27           (2) Under the influence of any controlled substance;

28           (3) Under the influence of any other drug;

29           (4) Under the combined influence of alcohol and any controlled substance or any other  
30   drug; or

31           (5) Has an alcohol concentration in his or her blood of four-hundredths of one percent or  
32   more by weight is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a  
33   regional jail facility not more than one year or fined not more than \$500, or both, in the discretion  
34   of the court.

35           (d) A person violating any provision of subsection (a) or (c) of this section is, for the second  
36   offense under this section, guilty of a felony and, upon conviction thereof, shall be imprisoned in  
37   a state correctional facility for a definite term of imprisonment of not less than one year nor more  
38   than three years.

39           (e) A person violating any provision of subsection (b) of this section is, for the second  
40   offense under this section, guilty of a felony and, upon conviction thereof, shall be imprisoned in

41 a state correctional facility for a definite term of imprisonment of not less than one year nor more  
42 than five years.

43 (f) For purposes of subsections (d) and (e) of this section relating to second and  
44 subsequent offenses, the following types of convictions shall be regarded as convictions under  
45 this section:

46 (1) Any conviction under the provisions of the prior enactment of this section; or

47 (2) Any conviction under a statute of the United States or of any other state of an offense  
48 which has the same elements as an offense described in subsection (a), (b), or (c) of this section.

49 (g) A person may be charged in a warrant or indictment or information for a second or  
50 subsequent offense under this section if the person has been previously arrested for or charged  
51 with a violation of this section which is alleged to have occurred within the applicable time periods  
52 for prior offenses, notwithstanding the fact that there has not been a final adjudication of the  
53 charges for the alleged previous offense. In that case, the warrant, or indictment, or information  
54 shall set forth the date, location, and particulars of the previous offense or offenses. A person  
55 may not be convicted of a second or subsequent offense under this section unless the conviction  
56 for the previous offense has become final.

57 (h) The fact that any person charged with a violation of subsection (a) or (b) of this section,  
58 or any person permitted to operate an aircraft as described under subsection (c) of this section,  
59 is or has been legally entitled to use alcohol, a controlled substance, or a drug, shall not constitute  
60 a defense against any charge of violating subsection (a), (b), or (c) of this section.

61 (i) When any person is convicted of violating any provision of this section, the clerk of the  
62 court in which the conviction occurred shall, within 72 hours after receipt thereof, transmit a true  
63 copy thereof to the federal aviation administration.

**§17C-25-3. Implied consent to test; administration at direction of law-enforcement officer;**  
**designation of type of test; definition of law-enforcement officer.**

1       (a) Any person who operates an aircraft in this state is considered to have given his or her  
2 consent by the operation thereof to a preliminary breath analysis and a secondary chemical test  
3 of either his or her blood, breath, or urine for the purposes of determining the alcoholic content of  
4 his or her blood, breath, or urine. A preliminary breath analysis may be administered in  
5 accordance with the provisions of §17C-25-4 of this code whenever a law-enforcement officer has  
6 reasonable cause to believe a person committed an offense prohibited by §17C-25-2 of this code.  
7 A secondary test of breath, blood, or urine shall be incidental to a lawful arrest and shall be  
8 administered at the direction of the arresting law-enforcement officer. The law-enforcement  
9 agency by which the law-enforcement officer is employed shall designate which one of the  
10 secondary tests shall be administered: *Provided, That* if the designated test is a blood test and  
11 the person arrested refuses to submit to the blood test, then the law-enforcement officer making  
12 the arrest shall designate in lieu thereof either a breath or urine test to be administered.

13       (b) If any political subdivision or the Division of Natural Resources does not have available  
14 to its law-enforcement officers the testing equipment or facilities necessary to conduct any  
15 secondary test which a law-enforcement officer may administer under this article, any member of  
16 the State Police, the sheriff of the county in which the arrest is made, or any deputy of the sheriff  
17 or any municipal law-enforcement officer of another municipality within the county in which the  
18 arrest is made may, upon the request of the arresting law-enforcement officer and in his or her  
19 presence, conduct a secondary test. The results of the test may be used in evidence to the same  
20 extent and in the same manner as if the test had been conducted by the arresting law-enforcement  
21 officer. Only the person actually administering or conducting the test is competent to testify as to  
22 the results and the veracity of the test.

**§17C-25-4. Preliminary analysis of breath to determine alcoholic content of blood.**

1       When a law-enforcement officer has reason to believe a person has committed an offense  
2 prohibited by §17C-25-2 of this code, the law-enforcement officer may require the person to  
3 submit to a preliminary breath analysis for the purpose of determining that person's blood alcohol

4 content. The law-enforcement officer shall administer the breath analysis as soon as possible  
5 after he or she has a reasonable belief that the person has been operating an aircraft while under  
6 the influence of alcohol, controlled substances, or drugs. Any preliminary breath analysis required  
7 under this section shall be administered with a device and in a manner approved by the Bureau  
8 of Public Health for that purpose. The results of a preliminary breath analysis shall be used solely  
9 for the purpose of guiding the law-enforcement officer in deciding whether an arrest should be  
10 made. When a person is arrested following a preliminary breath analysis, the tests shall be  
11 administered in accordance with the provisions of this article.

**§17C-25-5. How blood test administered; additional test at option of person tested; use of  
test results; certain immunity from liability incident to administering test.**

1 Only a doctor of medicine or a doctor of osteopathy, a registered nurse, or trained medical  
2 technician at the place of his or her employment, acting at the request and direction of the law-  
3 enforcement officer, may withdraw blood for the purpose of determining the alcoholic  
4 concentration of the blood. These limitations shall not apply to the taking of a breath test or a  
5 urine specimen. In withdrawing blood for the purpose of determining its alcoholic concentration,  
6 only a previously unused and sterile needle and sterile vessel may be used, and the withdrawal  
7 shall otherwise be in strict accord with accepted medical practices. A nonalcoholic antiseptic shall  
8 be used for cleansing the skin prior to venipuncture. The person tested may, at his or her own  
9 expense, have a doctor of medicine or a doctor of osteopathy, registered nurse, or trained medical  
10 technician of his or her own choosing, at the place of his or her employment, administer a chemical  
11 test in addition to the test administered at the direction of the law-enforcement officer. Upon the  
12 request of the person who is tested, full information concerning the test taken at the direction of  
13 the law-enforcement officer shall be made available to him or her. A person who administers any  
14 test upon the request of a law-enforcement officer, a hospital in or with which the person is  
15 employed or is otherwise associated or in which the test is administered and any other person,  
16 firm, or corporation by whom or with which that person is employed or is in any way associated,



17 is not in any way criminally liable for the administration of the test or civilly liable in damages to  
18 the person tested unless for gross negligence or willful or wanton injury.

**§17C-25-6. Interpretation and use of chemical test.**

1 (a)(1) Upon trial for the offense of operating an aircraft in this state while under the  
2 influence of alcohol, controlled substances, or drugs, or upon the trial of any civil or criminal action  
3 arising out of acts alleged to have been committed by any person operating an aircraft while under  
4 the influence of alcohol, controlled substances, or drugs, evidence of the amount of alcohol in the  
5 person's blood at the time of the arrest or of the acts alleged, as shown by a chemical analysis of  
6 his or her breath, blood, or urine, is admissible if the sample or specimen was taken within two  
7 hours from and after the time of arrest or of the acts alleged, and shall give rise to the following  
8 presumption or have the following effect: evidence that there was, at that time, four-hundredths  
9 of one percent or more by weight of alcohol in his or her blood, is prima facie evidence that the  
10 person was under the influence of alcohol.

11 (2) Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per  
12 one hundred cubic centimeters of blood.

13 (b) A chemical analysis of a person's breath, blood, or urine, in order to give rise to the  
14 presumption or to have the effect provided for in subsection (a) of this section, shall be performed  
15 in accordance with methods and standards approved by the state Bureau of Public Health. A  
16 chemical analysis of blood or urine to determine the alcoholic concentration of blood shall be  
17 conducted by a qualified laboratory or by the scientific laboratory of the criminal identification  
18 bureau of the State Police.

19 (c) The provisions of this article shall not limit the introduction in any administrative or  
20 judicial proceeding of any other competent evidence bearing on the question of whether the  
21 person was under the influence of alcohol, controlled substances, or drugs.

**§17C-25-7. Right to demand test.**

1        Any person lawfully arrested for operating an aircraft in this state while under the influence  
2 of alcohol, controlled substances, or drugs has the right to demand that a sample or specimen of  
3 his or her breath, blood, or urine be taken within two hours from and after the time of arrest and  
4 that a chemical test be performed. The analysis disclosed by the chemical test shall be made  
5 available to the arrested person immediately upon demand.

**§17C-25-8. Fee for withdrawing blood sample and making urine test; payment of fees.**

1        A reasonable fee shall be allowed to the person withdrawing a blood sample or  
2 administering a urine test at the request and direction of a law-enforcement officer in accordance  
3 with the provisions of this article. If the person whose blood sample was withdrawn or whose urine  
4 was tested was arrested and charged with a violation of §17C-25-2 of this code, the county having  
5 venue of the charge shall pay the fee. If the person is subsequently convicted of the charge, the  
6 fee shall be taxed as a part of the costs of the criminal proceeding and shall be paid,  
7 notwithstanding any other provision of this code to the contrary, into the general fund of the  
8 county.

**§17C-25-9. Unauthorized taking or operation of aircraft; penalty.**

1        Any person who commits the following prohibited acts is guilty of a felony and, upon  
2 conviction thereof, shall be fined not less than \$200 nor more than \$5,000, and confined in a state  
3 correctional facility for not less than two nor more than 10 years.

4        (1) A person, other than the duly authorized agent, servant, or employee of the owner  
5 thereof, who takes, without the knowledge and consent of the owner, and operates within this  
6 state any aircraft owned by another person.

7        (2) A person who willfully and without the knowledge or consent of the owner or person in  
8 lawful charge thereof, and with the intent to deprive the owner or person in lawful charge of the  
9 possession or use thereof, either temporarily or permanently, takes possession of, enters and  
10 operates, or otherwise takes and uses, any aircraft belonging to another or in his or her lawful  
11 possession;

12       (3) Any person who assists, aids, and abets, or is present for the purpose and with the  
13 intent to assist, aid, or abet another person in taking possession of, entering, and operating, or  
14 otherwise taking and using the aircraft.

15       (4) Any person who receives, buys, conceals, or otherwise disposes of any such aircraft  
16 knowing the same to have been stolen or taken without the knowledge or consent of the owner  
17 or person in lawful charge thereof.

**§17C-25-10. Federal license required for operation of aircraft.**

1       (a) A person shall not operate or cause or authorize to be operated any aircraft within this  
2 state unless such aircraft has an appropriate effective certificate, permit, or license issued by the  
3 United States, if such certificate, permit, or license is required by the United States.

4       (b) A person may not engage in aeronautics in this state unless he or she has an  
5 appropriate effective certificate, permit, rating, or license issued by the United States authorizing  
6 him or her to engage in the particular class of aeronautics in which he or she is engaged, if such  
7 certificate, permit, rating, or license is required by the United States.

8       (c) Where a certificate, permit, rating, or license is required by the United States, it shall  
9 be kept in the personal possession of a pilot when he or she is operating within this state and  
10 shall be presented for inspection upon the demand of any law enforcement officer, or any official,  
11 manager, or person in charge of any airport upon which they shall land, or upon the reasonable  
12 request of any other person.

13       (d) Where a certificate, permit, or license is required by the United States for an aircraft, it  
14 shall be carried in the aircraft at all times while the aircraft is operating in the state, shall be  
15 conspicuously posted in the aircraft where it may readily be seen by passengers or inspectors,  
16 and shall be presented for inspection upon the demand of any law enforcement officer, or any  
17 official, manager, or person in charge of any airport upon which the aircraft shall land, or upon the  
18 reasonable request of any person.

**§17C-25-11. Enforcement of aeronautics laws.**

1        All law enforcement officers shall enforce and assist in the enforcement of this article and  
2 all other laws of this state relating to aeronautics. Law enforcement officers may inspect and  
3 examine at reasonable hours any aircraft, the credentials of any person engaged in aeronautics  
4 required by the laws of this state or of the United States to have in his or her possession  
5 credentials evidencing his or her authority or permission to engage in aeronautics, any premises  
6 and the buildings and other structures thereon, where airports, air navigation facilities, or other  
7 aeronautical activities are operated or conducted.

NOTE: The purpose of this bill is to codify state, criminal offenses relating to operation aircraft and codify procedures relating to collection and use of evidence therefor.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.